114CSR15

LEGISLATIVE RULE
INSURANCE COMMISSIONER
SERIES 15

EXAMINERS AND EXAMINATIONS

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EXAMINERS AND EXAMINATIONS

§114-15-1. General.

1.1. Scope. --This legislative rule establishes:

a. Standards for the compensation, qualifications and classification of persons who conduct or participate in any analysis, review or examination provided for in W. Va. Code §33-2-9; and

b. Standards for retention of records and documents that the commissioner may require to be produced by an insurer in connection with any analysis, review or examination provided for in W. Va. Code §33-2-9.

c. This rule applies to all insurers authorized to transact insurance in this state by the commissioner, health maintenance organizations, hospital, medical, dental and health service corporations, health care corporations, fraternal benefit societies, and prepaid limited health service organizations.

1.2. Authority. -- W. Va. Code §§33-2-9(n) and 33-2-10.

1.3. Filing Date. -- May 6, 2005.

1.4. Effective Date. -- May 6, 2005.

§114-15-2. Definitions.

As used in this legislative rule:

2.1. "Accredited examiner" or "examiner" means a person who is an employee of the insurance commissioner whose principle duty is to conduct, supervise, or provide technical support for financial or market conduct examinations, including but not limited to the following division of personnel job classifications: insurance company examiner, or insurance company examiner supervisor, market conduct examiner, market conduct examiner supervisor, or computer audit specialist, pursuant to the classification plan of the West Virginia division of personnel or such other equivalent classification plan as the state of West Virginia may adopt.

2.2. "Additional examination assessment fee" means any additional or increased examination assessment fee levied by order of the commissioner in excess of the annual

examination assessment fee as allowed by the provisions of W. Va. Code §33-2-9.

2.3. "Application and accompanying records" means any written or electronic application form, any enrollment form, any document or record thereof, used to add coverage under any existing policy, questionnaire, telephone interview form, paramedical interview form or any other document used to question or underwrite an applicant for any policy issued by an insurer or for any declination of coverage by an insurer.

2.4. "Claim file and accompanying records" means the file maintained so as to show clearly the inception, handling and disposition of each claim. The claim file shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed.

2.5. "Commissioner" means the insurance commissioner of the state of West Virginia.

2.6. "Complaint" means a written communication primarily expressing a grievance.

2.7. "Declination" or "declined underwriting file" means all written or electronic records concerning coverage for which an application has been completed and submitted to the insurer or its producer but the insurer has made a determination not to issue a policy or not to add additional coverage when requested.

2.8. "Examination assessment fee" means the annual fee due on or before the first day of July of every year, as specified in W. Va. Code §33-2-9.

2.9. "Governor's travel rules" means those rules promulgated by the governor pursuant to the authority granted by W. Va. Code §12-3-11.

2.10. "Grievance" for health insurance purposes, means a written complaint submitted by or on behalf of a covered person regarding the:

a. Availability, delivery or quality of health services, including a complaint regarding an adverse determination made pursuant to utilization review;

b. Claims payment, handling or reimbursement for health care services; or

c. Matters pertaining to the contractual relationship between a covered person and a health carrier.

2.11. "Incidental expense" means any reasonable travel-related expense other than charges for lodging, meals or mileage, including but not limited to tolls, parking, gratuities or public transportation.

2.12. "Inquiry" means a specific question, criticism or request made in writing to an insurer by an examiner.

2.13. "Insurer" as used in this rule, means any entity covered by the scope of this rule

pursuant to subdivision c, subsection 1.1 of this rule, unless otherwise specified herein.

2.14. "Lodging" means a temporary place of abode, such as a hotel, maintained by the examiner for the convenience of being closer to the examination site, and at which the examiner has no intention of establishing residence.

2.15. "On-site" or "site" means at or conveniently proximate to the business location of the entity being examined, as listed on the examiner's semi-monthly days worked report, but does not include the offices of the insurance commissioner when work related to an examination is performed there.

2.16. "Other employee" means any individual who is an employee of the offices of the insurance commissioner of West Virginia, excluding the commissioner's accredited examiners.

2.17. "Other individual or entity" means any individual, corporation, partnership or other business entity that is not an employee of the offices of the insurance commissioner, to include but not be limited to independent certified public accountants, independent actuaries, qualified insurance examiners, reinsurance examiners, investment or information systems specialists or other individuals, corporations, partnerships or other business entities with particular skills or areas of expertise, considered competent by the commissioner to conduct or participate in any examination, analysis or review as allowed by W. Va. Code §33-2-9 or this rule.

2.18. "Related entity" means a person authorized to act on behalf of the insurer in connection with the business of insurance.

2.19. "Residence" means a permanent or semi-permanent place of abode, maintained solely for the convenience of the examiner and not in connection with an on-site examination assignment, including the examiner's domicile and any temporary residence established by the examiner.

§114-15-3. Examination, Analysis and Review Funding.

3.1. Every entity subject to the provisions of W. Va. Code §33-2-9 shall remit the examination assessment fee specified by the code or as increased by the commissioner on or before the first day of July of each year.

3.2. Every entity subject to the provisions of W. Va. Code §33-2-9 shall remit any additional examination assessment fee ordered by the commissioner on or before the date specified by the order.

3.3. The monies collected by the commissioner from the examination assessment fee and any additional examination assessment fee shall be deposited as specified in W. Va. Code §33-2-9. The monies deposited into the commissioner's examination revolving fund may be used for any of the following:

a. Salaries and expenses of the insurance commissioner's accredited examiners as

specified in this rule for any activities conducted pursuant to W. Va. Code §33-2-9 or this rule;

b. Salaries and/or expenses of the insurance commissioner's special deputies or other employees for activities conducted pursuant to W. Va. Code §33-2-9 or this rule;

c. Salaries, contract rates, fees and/or expenses of other individuals or entities for activities conducted pursuant to W. Va. Code §33-2-9 or this rule; and

d. Equipment, supplies, travel, education, and training and other incidental expenses for the commissioner, his or her deputies, other employees and accredited examiners as considered necessary by the commissioner for the performance of the duties and activities conducted pursuant to W. Va. Code §33-2-9 or this rule.

3.4. Other individuals or entities, when authorized in writing by the commissioner, may, and to the extent the commissioner considers necessary, bill and receive payments directly from the entities subject to examination under the provisions of W. Va. Code §33-2-9 and this rule for their work, travel and living expenses at rates approved by the commissioner, while involved in any of the activities set forth in this section.

§114-15-4. Examination, Analysis, Review Activities and Record Retention Requirements.

4.1. Examination, analysis and review activities shall include the following as they relate to the operation of entities, individuals or persons subject to the provisions of W. Va. Code §33-2-9:

a. Examination of the financial condition or market conduct practices of the entity, individual or person;

b. On-site analysis or review of any practice or condition affecting the entity, individual or person; and

c. Review of any statements, reports, or reviews of an entity, individual or person's financial condition, performance or market conduct practices including the review or development of any forecasts or projections or any type of filing made or intended to be made with the insurance commissioner. This review shall include but not be limited to the review or investigation of any audited financial report, compilation or review performed by a certified public accountant, actuarial statement or certification, documents submitted in application for licensure or registration in the state, or other matters or materials deemed necessary by the commissioner to fulfill his or her statutory obligations.

4.2. For the purpose of examination, analysis and review activities conducted pursuant to W. Va. Code §33-2-9 or this rule, an insurer or related entity licensed to do business in this state shall maintain its books, records and documents in a manner so that the commissioner can readily ascertain during an examination the insurer's compliance with the insurance laws and rules of this state, the standards outlined in the NAIC Financial Conditions Examiner Handbook, and with the standards outlined in the NAIC Market Conduct Examiners Handbook, including,

but not limited to, company operations and management, policyholder service, marketing, producer licensing, underwriting, rating, complaint/grievance handling, and claims practices.

a. For an insurer subject to 114CSR51 or 114CSR53, the insurer or related entity shall, in addition, maintain its books, records, and documents in a manner so that the practices of the entity regarding network adequacy, utilization review, quality assessment and improvement and provider credentialing may be ascertained during a market conduct examination.

b. All insurer records within the scope of this rule must be retained for the lesser of:

1. The current calendar year plus five (5) calendar years;

2. From the closing date of the period of review for the most recent examination by the commissioner; or

3. A period otherwise specified by statute as the examination cycle for the insurer.

c. The producer of record shall maintain a file for each policy sold, and the file shall contain all work papers and written communications in his or her possession pertaining to the policy documented therein. These records shall be retained for the current calendar year plus additional years as set forth in subdivision b of this subsection.

d. During an examination of the insurer, the insurer shall provide a copy of the written contract entered into with each third party vendor or service provider as requested by an examiner within the time frames set forth in subsection 4.9 of this section.

4.3. All policy record files shall be maintained for each policy issued, and shall be maintained for the duration of the current policy term plus additional years as set forth in subdivision b, subsection 4.2 of this section: Provided, That for life insurance policies and annuity contracts, such files must be maintained from the original inception date of the policy or contract through termination, plus additional years as set forth in subdivision b, subsection 4.2 of this section. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage. If a policy is terminated, either by the insurer or the policyholder, documentation supporting the termination and account records indicating a return of premiums, if any, shall also be maintained. Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this rule.

a. Policy records shall include the following:

1. Any application and accompanying records for each contract. The application shall bear a clearly legible means by which an examiner can identify a producer involved in the transaction. The examiners shall be provided with information clearly identifying the producer involved in the transaction.

2. Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. If any of these records have already been filed with the commissioner, a separate copy of the record need not be maintained in the individual policy files to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to the policy, as well as the actual policy issued to the insured, can be retrieved or recreated;

3. Any binder; and

4. Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, policy owner service and claims handling of the policy. The maintenance at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. These types of records include, but are not limited to, the application, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports (e.g. reports obtained from the Medical Information Bureau), questionnaires, internal reports, and underwriting and rating notes.

b. A declined underwriting file shall be maintained and shall include an application, any documentation supporting the decision to decline an issuance of a policy, any binder issued without the insurer issuing a policy, any documentation supporting the decision not to add additional coverage when requested and, if required by law, any declination notification. Notes regarding requests for quotations that do not result in a completed application for coverage need not be maintained for purposes of this rule.

4.4. Claim files shall be maintained as follows:

a. A claim file and accompanying records shall be maintained for the calendar year in which the claim is closed plus additional years as set forth in subdivision b, subsection 4.2 of this section. The claim file shall be maintained so as to show clearly the inception, handling and disposition of each claim. The claim files shall be sufficiently clear and specific so that pertinent events and dates of these events can be reconstructed. A claim file shall, at a minimum, include the following items:

1. For property and casualty: the file or files containing the notice of claim, claim forms, proof of loss or other form of claim submission, settlement demands, accident reports, police reports, adjustors' logs, claim investigation documentation, inspection reports, supporting bills, estimates and valuation worksheets, medical records, correspondence to and from insureds and claimants or their representatives, notes, contracts, declaration pages, certificates evidencing coverage under a group contract, endorsements or riders, work papers, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, payment or denial of the claim, copies of

claim checks or drafts, or check numbers and amounts, releases, all applicable notices, correspondence used for determining and concluding claim payments or denials, subrogation and salvage documentation, any other documentation created and maintained in a paper or electronic format, necessary to support claim handling activity, and any claim manuals or other information necessary for reviewing the claim;

2. For life and annuity: the file or files containing the notice of claim, claim forms, proofs of loss, medical records, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, claim handling logs, copies of checks or drafts, check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity; and

3. For health: the file or files containing the notice of claim, claim forms, medical records, bills, electronically submitted bills, proofs of loss, correspondence to and from insureds and claimants or their representatives, claim investigation documentation, health facility pre-admission certification or utilization review documentation, claim handling logs, copies of explanation of benefit statements, any written communication, any documented or recorded telephone communication related to the handling of a claim, including the investigation, copies of checks or drafts, or check numbers and amounts, releases, correspondence, all applicable notices, and correspondence used for determining and concluding claim payments or denials, and any other documentation, maintained in a paper or electronic format, necessary to support claim handling activity.

b. Where a particular document pertains to more than one file, insurers may satisfy the requirements of this section by making available, at the site of an examination, a single copy of each document.

c. Documents in a claim file received from an insured, the insured's agent, a claimant, the commissioner or any other insurer shall bear the initial date of receipt by the insurer, date stamped in a legible form in ink, in an electronic format, or some other permanent manner. Unless the company provides the examiners with written procedures to the contrary, the earliest date indicated on a document will be considered the initial date of receipt.

d. If an insurer, as its regular business practice, places the responsibility for handling certain types of claims upon company personnel other than its claims personnel, the insurer need not duplicate its files for maintenance by claims personnel. These claims records shall be maintained as part of the records of the insurer's operations and shall be readily available to examiners.

4.5. Records to be maintained relating to the insurer's compliance with licensing requirements shall include the licensing records of each producer associated with the insurer. Licensing records shall be maintained so as to show clearly the licensing status of the producer at the time of solicitation, negotiation or procurement, as well as the dates of the appointments and

terminations of each producer. A screenprint from the producer database (PDB) may serve to provide adequate proof only of a producer's current licensing status.

4.6. The complaint records required to be maintained shall include a complaint log or register, or grievance log or register for health insurers, in addition to the actual written complaints or grievances. The complaint log or register shall show clearly the total number of complaints for the period of time set forth in subdivision b, subsection 4.2 of this section, the classification of each complaint by line of insurance and by complainant, for example the insured, the commissioner, a third party, etc., the nature of each complaint, the insurer's disposition of each complaint, and the complaint number assigned by the commissioner, if applicable. If the insurer maintains the file in a computer format, the reference in the complaint log or register for locating the documentation shall be an identifier such as the policy number or other code. The codes shall be provided to the examiners at the time of an examination.

4.7. Records required to be maintained by this rule may be saved as follows:

a. Any record required to be maintained by an insurer may be created and stored in the form of paper, photograph, magnetic, mechanical or electronic medium; or any process that accurately forms a durable reproduction of the record, so long as the record is capable of duplication to a hard copy that is as legible as the original document. Documents that are produced and sent to an insured by use of a template and an electronic mail list shall be considered to be sufficiently reproduced if the insurer can provide proof of mailing of the document and a copy of the template. Documents that require the signature of the insured or insurer's producer shall be maintained in any format listed above provided that evidence of the signature is preserved in that format.

b. The maintenance of records in a computer-based format shall be archival in nature, so as to preclude the alteration of the record after the initial transfer to a computer format. Upon request of an examiner, all records shall be capable of duplication to a hard copy that is as legible as the original document. The records shall be maintained according to written procedures developed and adhered to by the insurer. The written procedures shall be made available to the commissioner during an examination.

c. Photographs, microfilms, or other image-processing reproductions of records shall be equivalent to the originals and may be certified as the same in actions or proceedings before the commissioner unless inconsistent with the state administrative procedure act, chapter twenty-nine-a of the West Virginia Code.

4.8. Records required to be maintained by this rule shall be located as follows:

a. All records required to be maintained under this rule shall be kept in a location that will allow the records to be produced for examination within the time period required. When, under normal circumstances, someone other than the insurer maintains a required record or type of record, the other person's responsibility to maintain the records shall be set forth in a written agreement, a copy of which shall be maintained by the insurer and shall be available to the examiners for purposes of examination.

b. If required by law or otherwise available, the insurer shall maintain disaster preparedness or disaster recovery procedures that include provisions for the maintenance or reconstruction of original or duplicate records at another location. These procedures shall be provided for review during the examination.

4.9. Initial data requests will be submitted to a company at least thirty (30) days prior to the commencement of the on-site examination, desk audit or other form of review to provide ample time for the company to prepare the materials requested. Subdivisions a and b below apply to requests for supplemental data and information not anticipated at the time of the initial request.

a. As a means to facilitate the examination and to aid in the examination in accordance with W. Va. Code §33-2-9, an insurer shall provide any requested document or written response to an inquiry submitted by an examiner within five (5) working days, or such other time period as mutually agreed upon by the examiner and the insurer. It is a violation of this rule for an insurer to fail to produce a requested document within the specified time period unless the insurer can demonstrate to the satisfaction of the commissioner that the requested record cannot reasonably be provided within the specified time period of the request.

b. Additional records requested by the commissioner shall be made available for the examination upon the date specified by the examiner in charge.

4.10. Original records required to be provided during a market conduct examination will be returned to the insurer following the examination. If the records relate to an inquiry made by an examiner, copies of the records will become a part of the work papers of the examination. W. Va. Code §33-2-9 shall govern the public access to the work papers of the examination.

§114-15-5. Contracts for Services and Bond Requirements for Other Individuals.

5.1. The commissioner may, as he or she considers necessary, retain any other individual or entity, as defined in subsection 2.17 of this rule, to conduct, supervise, or participate in any examination, analysis or review as provided in W. Va. Code §33-2-9, or this rule.

5.2. Any contract between the commissioner and any other individual or entity, whose services are retained pursuant to this section, is specifically exempt from the competitive bidding requirements contained in W. Va. Code §5A-3-1 et seq.

5.3. The commissioner may, as he or she considers necessary, require any other individual or entity, whose services are retained pursuant to this section, to furnish an appropriate bond prior to conducting, supervising, or participating in any examination, analysis or review as provided in W. Va. Code §33-2-9 or this rule, as follows:

a. The bond shall be in an amount which in the commissioner's discretion is sufficient to complete the examination, analysis or review, but in no event shall be in an amount of less than ten thousand dollars ($10,000.00).

b. Should the commissioner require any other individual or entity, whose services are retained pursuant to this section, to provide a bond, it shall be issued by a company licensed to transact surety insurance in the state of West Virginia as provided in W. Va. Code §33-19-1 and which has received at least an A rating by A.M. Best Company, Inc. in the year immediately preceding the date of the bond's issuance.

c. Proof of payment for and issuance of the bond shall be submitted to the commissioner prior to commencement of any examination, analysis or review by any other individual or entity whose services are retained pursuant to this section.

§114-15-6. Compensation and Accrued Time of Accredited Examiners.

6.1. Subject to the commissioner's approval, insurance company examiner supervisors and market conduct examiner supervisors shall receive the salary recommended for insurance examiners in-charge by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners. Subject to the commissioner's approval, insurance company examiners and market conduct examiners shall receive the salary recommended for insurance company examiners by the Financial Condition Examiners Handbook of the National Association of Insurance Commissioners.

6.2. An examiner's salary shall be calculated based upon a five-day work week.

6.3. Examiners shall accrue and use annual leave and sick leave at the rates and in the manner established by current West Virginia Division of Personnel rules for state employees or by such other equivalent method as may be adopted by the state of West Virginia, and as supplemented by agency policies regarding use of annual and sick leave established by the commissioner.

a. On any West Virginia state or national holiday that a company being examined chooses to remain open and an examiner chooses to work, the examiner shall be properly compensated.

b. Examiners shall not be reimbursed for travel or living expenses for any day authorized as annual leave.

c. Examiners shall continue to be reimbursed for living expenses during times of sick leave as long as the examiner remains at his or her on-site lodging during the illness.

§114-15-7. Travel and Living Expenses.

7.1. Travel by examiners in connection with activities conducted pursuant to W. Va. Code §33-2-9 or this rule shall not be undertaken unless authorized by the commissioner or his or her designee. Travel expenses are subject to the following limitations:

a. All travel shall be by automobile unless otherwise authorized by the

commissioner or his or her designee.

1. Examiners shall be compensated for the actual mileage traveled and other incidental expenses for in-state and out-of-state travel as allowed by the Governor's travel rules.

2. When an automobile is used, and the distance to an examination or to an assignment is four hundred (400) miles or more, the distance traveled per day shall not be less than four hundred (400) miles per day.

b. When air travel is authorized, a maximum of one (1) day's travel time is allowed and the examiner shall be reimbursed for actual travel expenses incurred.

c. Examiners may travel during regular working hours to and from the examination site no more frequently than every two weeks, and must be reimbursed for travel expenses associated with the travel: *Provided*, That if travel expenses do not exceed the expenses that the examiner would incur if he or she remained on-site, examiners may travel to and from their residences more frequently than every two weeks and must be reimbursed for travel expenses.

7.2. Living expenses will be reimbursed in accordance with the Governor's travel rules.

a. The street address of the examiner's on-site lodging shall be used in determining the per diem allowance.

b. Weekend and holiday expenses: The examiner shall be reimbursed for lodging, meals and incidental expenses actually incurred on the basis of a seven-day week as long as the examiner actually occupies his or her on-site lodging on each day for which reimbursement is requested.

c. The commissioner may not authorize living expenses if the examination takes place in a location within fifty (50) miles (one way) of an examiner's residence. However, the examiner will be compensated for actual mileage traveled and other incidental expenses as allowed by the Governor's travel rules.

d. Examiners and other employees may, with the approval of the commissioner or his or her designee, be compensated for travel and living expenses in accordance with the Governor's travel rules when attending training, educational courses, conferences, seminars or other activities authorized by the commissioner. Registration fees may be included as expenses that can be reimbursed to the examiners or other employees.

7.3. Other individuals or entities involved in activities conducted pursuant to W. Va. Code §33-2-9 or this rule who are billing directly as authorized in subsection 3.4 of this rule shall file a schedule of their fees and charges with the commissioner prior to incurring any charges. These individuals or entities shall submit copies of their billings to the commissioner simultaneously with their submission to the billed entity, individual or person.

§114-15-8. Examiner Reporting Requirements.

8.1. The examiner in charge shall prepare an "examiner's semimonthly days worked report" to be submitted on a form prescribed by the commissioner. The form shall be submitted to the commissioner within three (3) days of the end of each semimonthly pay period. The report shall contain the following information:

a. The period of time the report covers;

b. The name of entity, individual or person that is being examined and their normal hours of operation;

c. The mailing address and street address, including county, of the business location of the entity being examined, and the mailing address and street address of the examiner's on-site lodging;

d. The telephone number(s) and extension(s) where the examiner can be reached at all times;

e. The domiciliary state, if the examination is being performed on a non-domestic entity;

f. A listing of any other individual or entity participating in the assignment and their domicile or zone representation, if applicable;

g. A description of the phases of the examination or assignment that the examiner worked on during the reporting period;

h. Comments on any unusual or controversial items;

i. The tentative closing date of the assignment;

j. A schedule of each of the days in the reporting period and the examiner's status on that day, to include the total of days designated as work days, annual days, sick days and expense days; and

k. The name and signature of the examiner in charge completing the report and a statement that the information provided is true and correct.

8.2. The information identified in subsection 8.1 of this section is necessary to satisfy the substantiation of business expenses requirement of the Internal Revenue Service placed upon the commissioner as an employer. Failure on the part of the examiner to provide any of the information could require the offices of the insurance commissioner of West Virginia to report expense amounts as income of the examiner to the Internal Revenue Service.

8.3. An examiner shall report changes to his or her telephone number and extension to the commissioner between reporting periods. Failure to report the changes could affect the commissioner's ability to consider an examiner's business expenses as substantiated.